IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-CV-00329-GKF-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO COMPEL CARGILL, INC. AND CARGILL TURKEY PRODUCTION LLC TO RESPOND TO ITS JULY 10, 2006 SET OF REQUESTS FOR PRODUCTION

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and submits this reply in further support of its Motion to Compel Cargill, Inc. and Cargill Turkey Production LLC to Respond to its July 10, 2006 Set of Requests for Production ("Motion") [DKT. # 1120].

I. Argument

In its Motion, the State has sought an order, *inter alia,* overruling Cargill, Inc. and Cargill Turkey Production LLC's (collectively, "Cargill") temporal and geographical objections to the State's July 10, 2006 requests for production. Cargill's response is unpersuasive for the following reasons:

1. Where the conduct causing the State's injuries and damages extends back many decades, and further where claims brought by the State that turn on that conduct are not barred by the statute of limitations under the doctrine of *nullum tempus*, such discovery into the entire

course of such conduct is *ipso facto* relevant and not unduly burdensome. Accordingly, Cargill's attempt to impose arbitrary temporal restrictions on the State's discovery should be overruled.

2. Where facts, conduct and its consequences are not *sui generis*, but rather are common across geographical regions, discovery into such facts, conduct and its consequences without restriction to geographical bounds is relevant to show notice, knowledge, awareness, injury and control -- key issues in this case. Moreover, where compliance with industry-wide standards and industry-wide state of the art are asserted as affirmative defenses, Cargill has by its own pleading made discovery into such facts, conduct and its consequences occurring in other geographical regions relevant. Furthermore, the State's discovery that implicates searches into the records of Cargill operations occurring in other geographical regions is narrowly-tailored. Therefore, such discovery is not unduly burdensome. Accordingly, Cargill's attempt to impose geographical restrictions on the State's discovery should be overruled.

A. The State has not omitted "critical context" to the issues raised in its Motion

In its response, Cargill argues that the State has somehow omitted "critical context" to the issues raised by its Motion. *See* Cargill Response, pp. 2-4. The "context" that Cargill raises is not "critical" to the Court's understanding of the issues before it, except to the extent it illuminates the difficulty the State has faced in obtaining responsive information from Cargill. First, Cargill asserts that because it has produced some responsive documents (primarily grower files[1]), the State cannot seek, and Cargill is under no obligation to produce, the remaining

[1] It is important to pay attention to Cargill's very careful wording of what it has actually produced with respect to its grower files. It is only those files involving growers "with whom a Cargill Defendant has contracted since 2002." *See* Cargill Response, p. 2 (emphasis added). Thus, to the extent a grower ceased being a Cargill grower in 2001, Cargill has not produced such files. There is obviously no justification for such a cut-off as documents pertaining to growers who contracted with Cargill prior to, but not after, 2002 are plainly relevant; the State is entitled to production of such documents.

responsive documents sought by the State. Cargill does not provide any caselaw to support this novel proposition. Cargill cannot be the unilateral arbiter of what is relevant to the State's case (which Cargill at the same time contradictorily and disingenuously claims not to understand) and of what it will produce.[2] Cargill is not providing "context" to the Court, but rather is arguing for an unreasonable, unsupportable limitation on its discovery obligations.

Cargill next argues that the State has omitted purported "critical context" by allegedly failing to discuss each specific document request[3] in its Motion. Cargill ignores the fact that Cargill made a temporal objection to all 125 of the State's document requests and a geographical objection to all 38 of the State's document requests seeking information outside of the Illinois River Watershed. Again, this argument does not add "context" to the issues before the Court. Cargill's objections are essentially blanket relevancy objections. Given, however, that the State's requests are facially relevant, the burden is on Cargill to demonstrate a lack of relevancy.[4] *See*

---

[2] Applying its unilateralist view of relevancy to its discovery obligations, Cargill has made conflicting representations about the status of its production. *Compare* Ex. 1 (April 26, 2007: "The Cargill defendants will complete production of hard-copy files responsive to the State's document requests in the near future"); Ex. 2 (April 27, 2007: "I will make a representation to the Court that we have completed our hard copy production, Cargill has"); & Ex. 3 (May 2, 2007: ". . . Cargill's hard copy response to your Request for Production is essentially complete").

[3] In its response, Cargill speaks of 250 requests for production. To be clear, the State served identical sets of 125 requests for production on the two Cargill defendants.

[4] In its Response, pp. 5-6, Cargill represents that *Williams v. Sprint / United Management Co.*, 2006 WL 2734465 (D. Kan. Sept. 25, 2006), stands for the proposition that "a party propounding discovery requests containing [sic] not limited to any time period bears the burden of proving relevancy." This is incorrect. First, all that *Williams* stands for in this respect is that "when relevancy is not readily apparent on the face of the request, the party seeking the discovery has the burden of showing the relevancy of the discovery request." *See id.* at *6. Contrary to Cargill's suggestion, *Williams* does not stand for the proposition that all discovery requests not temporally limited are facially irrelevant. Second, Cargill fails to point out that the reason why the discovery in *Williams* was disallowed by the magistrate judge was not that the discovery was irrelevant, but rather that it was overbroad in temporal scope. *See id.* at *6-8.

American Builders & Contractors Supply Co., Inc. v. Lyle, 2006 WL 3316749, *1 (D. Kan. Nov. 14, 2006). Cargill has utterly failed to do this.[5]

As its final complaint as to the alleged lack of purported "critical context," Cargill continues to feign ignorance as to the State's claims.[6] This argument does not square with reality. The First Amended Complaint plainly lays out the State's allegations against Cargill. The State's extensive discovery responses have provided a myriad of additional detail concerning

---

And third, Cargill fails to disclose to this Court that the finding that the discovery was overbroad in temporal scope was overturned by the district court. *See Williams v. Sprint / United Management Co.*, 2006 WL 3256840, *1 (D. Kan. Nov. 9, 2006).

[5] In fact, Cargill cites to only two requests in support of its relevancy objection (presumably the "best" examples it could come up with): Request for Production Nos. 105 (which seeks documents regarding the nature or character of Cargill's legal relationship with its contract growers), and 106 (which seeks documents pertaining to any legal disputes or lawsuits regarding the nature or character of Cargill's legal relationship with its contract growers). Cargill's examples are entirely unpersuasive. These requests are facially relevant. Cargill is well aware that the legal relationship between Cargill and its growers is an issue in this litigation. *See, e.g.,* First Amended Complaint, ¶¶ 32-45, 48-54. To the extent Cargill's legal relationship with its contract growers does not vary between watersheds, useful admissions may be found in documents from other watersheds regarding this legal relationship which would be equally applicable to the nature of the legal relationship in the Illinois River Watershed. Likewise, to the extent it differs, the State is entitled to discover precisely how the legal relationship differs and the reasons why it differs. Finally, to the extent there have been disputes regarding the legal relationship (wherever those disputes may have occurred), that information too would be useful to the State in establishing the precise nature of the relationship between Cargill and its growers in the Illinois River Watershed. For Cargill to pretend not to appreciate the facial relevance of this discovery -- particularly when it has asserted in its answer that its growers are not its agents or employees and that it has no control over the disposal of poultry waste -- is disingenuous. *See* Cargill, Inc. & Cargill Turkey, Affirmative Defenses 41 & 42. Simply put, the relevancy of the State's discovery requests is facially obvious.

[6] In "support" of this argument Cargill misstates the Court's ruling in its February 26, 2007 Order. The Court did not conclude that the State had "not been sufficiently forthcoming" as Cargill suggests. Rather, the Court recognized "the difficulties inherent in responding to contention interrogatories such as those propounded by Defendants," concluded that some of the State's responses were insufficient, and ordered that the State should supplement those responses. Feb. 26, 2007 Order, pp. 6-8.

these allegations.[7] If Cargill does not understand the straightforward allegations the State is making against it, it is not a matter of the State not telling Cargill; rather, it is a matter of Cargill not listening.

B. Cargill's attempt to impose arbitrary temporal limitations is improper

As pointed out in the State's Motion, the statute of limitations does not run against the State when it is asserting, as is the case here, claims subject to the doctrine of *nullum tempus*. Cargill's argument that a temporal restriction on the State's discovery is appropriate is two-pronged, yet internally contradictory. In the first prong of its response, Cargill states that "[e]ven assuming for the sake of argument that Plaintiffs [sic] could avoid the statute of limitations as to some of their [sic] claims, however, the temporally unlimited discovery they [sic] seek is still far beyond that permitted by the rules and by common sense." *See* Cargill Response, p. 5. Cargill is wrong. The rules and common sense both dictate that if a party's claims are not time-barred, the party is plainly entitled to discovery relating to all the conduct that gives rise to the claims.[8] If the discovery is, as Cargill admits, relevant as to post-2002 documents, then it logically follows that the discovery is equally relevant as to pre-2002 documents.

In the second prong of its response, Cargill contradictorily states that it nonetheless unilaterally has imposed a 2002 cut-off for its responses to the State's discovery on the basis of

---

[7] By the State's count, it has, to date, responded to 121 interrogatories (not counting sub-parts), 339 requests for production, and 250 requests for admission. The discovery burdens the Poultry Integrator Defendants have collectively placed on the State greatly outweigh any burdens the State has placed on the Poultry Integrator Defendants.

[8] As the State explained in its Motion, p. 6, fn. 6, even assuming that there is a statute of limitations applicable to certain of the State's claims, it is well settled that discovery of matters occurring prior to the statute of limitations period may be had.

"the longest potentially applicable statute of limitations period . . . ." *See* Cargill Response, p. 6.[9] Under claims subject to the doctrine of *nullum tempus*, however, there is no "longest potentially applicable" statute of limitations.

Cargill editorializes (incorrectly) that the State's nuisance and trespass claims are weak, *see* Cargill Response, p. 10, fn. 6, apparently claiming that it has no obligation to provide discovery on claims it disdains, even when the State is seeking discovery of Cargill to support its nuisance and trespass claims. Obviously, if a statute of limitations does not apply -- as is the case here -- the State is not temporally constrained in the injuries for which it may seek relief. Data (which has been disclosed to Defendants) support the proposition that the State's injuries extend back at least to the early 1970s. Given the nature of geological systems, conduct giving rise to these injuries occurred even earlier than that. Accordingly, such conduct being actionable, the temporal reach of the State's discovery into the 1950s and earlier is *ipso facto* relevant.

The weakness of Cargill's position is revealed by the inapplicable caselaw it relies upon in its Response at pp. 7-8. This caselaw does not involve continuing torts or the doctrine of *nullum tempus* and is therefore easily distinguishable. *See Moss v. Blue Cross & Blue Shield of Kansas, Inc.*, 2007 WL 1018811, *1 (D. Kan. Apr. 3, 2007) (individual Family and Medical Leave Act claim arising out of a singular violation); *Williams v. Sprint / United Management Co.*, 2006 WL 2734465, *7 (D. Kan. Sept. 25, 2006) (age discrimination case in which conduct allegedly occurred in a narrow 18-month timeframe); & *Apsley v. The Boeing Co.*, 2007 WL

[9] Cargill goes on to recognize "that some requests may justify longer periods of inquiry [than 2002] . . . ." *See* Cargill Response, p. 6. As Cargill notes earlier in its Response, p. 6, "parties have the duty to respond to overly broad discovery requests to the extent they are not objectionable." Thus, even to the extent Cargill (incorrectly) believes that the discovery requests are objectionable, it should have produced documents for those requests "that may justify longer periods of inquiry." It has not, however.

163201, *3 (D. Kan. Jan. 18, 2007) (employment discrimination case limiting discovery to "the earliest date of Boeing's alleged scheme").

In sum, the State's discovery should not be temporally restricted to 2002. The State has claims that are not constrained by a statute of limitations. The misconduct that has caused the State's injuries extends back decades. It necessarily follows that the State should be able to conduct discovery into these matters relating to this misconduct. Such discovery is plainly relevant, and since it goes directly to the State's claims, it cannot be unduly burdensome.

C. Cargill's attempt to impose a geographical limitation is improper

Cargill's view of the geographical scope of discovery is myopic. Cargill obviously operates its business in a cohesive, coherent fashion. Poultry-related procedures, policies, knowledge and information developed or implemented in operations in one locale would logically and naturally be shared with similar operations in other locales. *See* State's Motion, Ex. H, p. 6 ("Cargill believes in continuous improvement to protect the environment. . . . We maintain one set of expectations for every part of Cargill . . ."). Cargill does not appear to seriously contest this point. Rather, Cargill responds with hyperbole. Cargill states that it has "over 90 business units and over 1,000 facilities worldwide." Cargill Response, p. 9. Quite obviously, however, not all of Cargill's 90+ business units and 1,000+ facilities worldwide have a connection or relevance to the poultry industry and its environmental impacts, and Cargill is accordingly not going to be burdened with searching all those units and facilities for responsive documents. By the same token, however, Cargill does have a responsibility to search for and produce documents from those units and facilities within its organization that have a connection or relevance to the poultry industry and its environmental impacts since those bear on claims in this lawsuit.

Contrary to Cargill's characterization, *see* Response, p. 10, the high degree of relevancy of the State's requests is readily apparent, and was outlined in some detail in the State's Motion, pp. 7-11. The requests go to issues of, *inter alia*, notice, awareness, knowledge, injury, control, company-wide and industry-wide practices, and industry state of the art. A review of the specific document requests made by the State bears this fact out:

In Requests 6-8 the State seeks discovery as to the constituents of poultry waste. The constituents of poultry waste created in the Illinois River Watershed are not *sui generis*. Information pertaining to the constituents of poultry waste, wherever developed, is therefore relevant, since it is these constituents that are alleged to have caused the State's injuries.

In Requests 9 and 12 the State seeks discovery as to the propensity of poultry waste to run-off, and in Requests 15, 18, 21, 24, 27, 30, 33 and 36, the State seeks discovery as to the environmental and human health impacts of poultry waste run-off. The propensity of poultry waste to run-off is not *sui generis* to the Illinois River Watershed. *See, e.g.,* State's Motion, Ex. F, p. 2201. Nor are the environmental and human health impacts of poultry waste run-off *sui generis* to the Illinois River Watershed. *See, e.g.,* State's Motion, Ex. G, sec. 1, pp. 4 & 24. The sought-after discovery, as noted in the State's Motion, *see* pp. 7-8, goes directly to, *inter alia,* issues of knowledge, awareness and notice.

In Requests 39, 42, 45, 48, 51, 54, 57, 62, 65, 69 and 80, the State seeks discovery as to the uses, management, handling, storage, disposal, transport, and land application of poultry waste. To the extent that the manner in which poultry waste is managed, handled and disposed is similar from watershed to watershed, such information is relevant, since practices and their effects in one watershed can be extrapolated to the Illinois River Watershed. To the extent it differs, such information would similarly be highly relevant, since it would it raise the question

of why policies and procedures designed to reduce the environmental impact of poultry waste were not being utilized in the Illinois River Watershed.[10]

In Requests 67 and 124, the State seeks discovery as to corporate disciplinary and government regulatory actions regarding poultry waste handling. Such discovery plainly goes to the corporate awareness, knowledge and notice of the environmental effects of poultry waste.

In Requests 76, 78, 82 and 84, the State seeks discovery as to the design and maintenance of poultry houses and conditions therein, the ownership and raising of birds, and the legal relationship between Cargill and its growers. Such discovery goes to, *inter alia,* the control Cargill has over its growers. On the one hand, if the design and maintenance of poultry houses and conditions therein, the ownership and raising of birds, and the legal relationship between Cargill and its growers are the same across the company, then evidence of control over growers in one watershed would be relevant evidence of control over growers in the Illinois River Watershed. On the other hand, if they differ across Cargill from watershed to watershed, such evidence would shed light on the control over growers in the Illinois River Watershed.

In Requests 99-102, the State seeks discovery into specific trade groups and other organizations that the State believes are involved in addressing issues pertaining to the environmental effects of poultry waste. Relatedly, in Request 119, the State seeks discovery into public relations activities regarding environmental effects of poultry waste. Such discovery goes to the corporate awareness, knowledge and notice of the environmental effects of poultry waste.

Cargill points to the Court's October 4, 2006 Opinion and Order [DKT #932] for support. However, in that Opinion and Order, p. 6, the Court stated: "The Court is not holding that no

---

[10] As pointed out in the State's Motion, Cargill has adopted affirmative defenses alleging that it has conducted its operations and activities in accordance with industry standards and the prevailing state of the art and technology in the poultry industry. *See* State's Motion, p. 10, fn. 8. Conduct within the poultry industry nationwide is therefore highly relevant.

documents from the *City of Tulsa* action are relevant to this action. The Court is finding that Plaintiffs have not sufficiently articulated the relevance of the documents sought." Here, although it submits that the relevance is clear on its face, the State has clearly, concisely and sufficiently articulated the relevance, from both a legal and factual standpoint, of the sought-after discovery to the State's claims.

Cargill's undue burden argument rests on the premise that the sought-after discovery is of "marginal relevance." As demonstrated above, however, this premise is wrong; Cargill is not the unilateral arbiter of relevance. The sought-after discovery is highly relevant to the State's claims. To produce such highly relevant materials from its files is not unduly burdensome. Moreover, contrary to Cargill's suggestion, the State is not seeking needles in haystacks with its discovery. The environmental effects of its poultry operations should be a core concern of the company. *See* State's Motion, Ex. H, p. 6. Cargill can focus its search for responsive documents on those divisions of the company that actually deal with matters pertaining to poultry. Finally, the State frankly finds the statement by Cargill that it has spent more than $1 million producing documents in this case incredible. To date, Cargill has produced fewer than 83,000 pages of documents.[11] Why it should cost $12 per page of production is simply inexplicable.[12]

II. Conclusion

For all of the above reasons, and the reasons set forth in its Motion, the State's Motion should be granted.

---

[11] In contrast, the State has produced for inspection more than a million pages.

[12] As a final note, in the April 27 hearing, Cargill argued that the State is required to apply Rule 33(d) requirements to documents being produced as they are kept in the ordinary course of business under Rule 34(b), matching specific documents with specific document requests. Cargill takes the opposite position with regard to its own document production. *See* Response, pp. 18-19.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Tina Lynn Izadi, OBA #17978
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/ M. David Riggs
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460

David P. Page, OBA #6852
Bell Legal Group
222 S. Kenosha
Tulsa, OK 74120
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*

Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2007, I electronically transmitted the attached document to the following:

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com

Michael R. Bond michael.bond@kutakrock.com, amy.smith@kutakrock.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald pbuchwald@ryanwhaley.com

Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET; BDEJONG@MKBLAW.NET

W A Drew Edmondson fc_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us; suzy_thrash@oag.state.ok.us.

Delmar R Ehrich dehrich@faegre.com, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

D. Richard Funk rfunk@cwlaw.com

Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com

Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com

Robert W George robert.george@kutakrock.com, sue.arens@kutakrock.com; amy.smith@kutakrock.com

James Martin Graves jgraves@bassettlawfirm.com

Tgrever@lathropgage.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean! _Burnett@oag.state.ok.us

Lee M Heath ! lheath@motleyrice.com

Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon phixon@mcdaniel-lawfirm.com

Mark D Hopson mhopson@sidley.com, joraker@sidley.com

Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us; jean_burnett@oag.state.ok.us

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com

Bruce Jones bjones@faegre.com, dybarra@faegre.com; jintermill@faegre.com; cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com

Nicole Marie Longwell Nlongwell@@mcdaniel-lawfirm.com

Archer Scott McDaniel smcdaniel@mcdaniel-lawfirm.com

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov, Kendra.Jones@arkansasag.gov

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@edbelllaw.com, smilata@edbelllaw.com

Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net

Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com

Randall Eugene Rose ! rer@owenslawfirmpc.com, ka@owenslawfirmpc.com

Patrick! Michael Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com; amcpherson@ryanwhaley.com

Robert E Sanders rsanders@youngwilliams.com,

David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net; ntorres@pmrlaw.net

Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com

John H Tucker jtuckercourts@rhodesokla.com, lwhite@rhodesokla.com

Elizabeth C Ward lward@motleyrice.com

Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com

Timothy K Webster twebster@sidley.com, jwedeking@sidley.com

Gary V Weeks !

Terry Wayen West terry@thewestlawfirm.com,

Edwin Stephen Williams steve.williams@youngwilliams.com

Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com

Elizabeth Claire Xidis cxidis@motleyrice.com

Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

I hereby certify that on this 10th day of May, 2007, I served the foregoing document by U.S. Postal Service on the following:

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

/s/ M. David Riggs